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EXTRAORDINARY
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PART II—Section 3—Sub-section (iii)
प्राधिकार से प्रकाशित
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सं. 15] नई दिल्ली, मंगलवार, अगस्त 4, 2020/श्रावण 13, 1942
No. 15] NEW DELHI, TUESDAY, AUGUST 4, 2020/SRAVANA 13, 1942

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 24 जुलाई, 2020

आ.आ. 15(अ).— लोक प्रतिनिधित्व अधिनियम, 1951 (1951का 43) की धारा 106 (क)के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा, वर्ष 2019 की निर्वाचन याचिका संख्या 2 में कर्नाटक उच्च न्यायालय के दिनांक 31 जनवरी, 2020 के आदेश को प्रकाशित करता है।

(संलग्न निर्णय /आदेश अंग्रेजी अधिसूचना में दिया गया है)

[सं. 82/कर्नाटक-लो.स./2/2019]

आदेश से,

बी. सी. पात्रा, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 24th July, 2020

O.N. 15(E).— In pursuance of section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Karnataka dated 31st January, 2020 in the Election Petition No. 2 of 2019.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 31ST DAY OF
JANUARY 2020
BEFORE
THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA
ELECTION PETITION NO.2 OF 2019

BETWEEN

SRI G DEVARAJEGOWDA
SON OF LATE GUNDEGOWDA,
AGED 42 YEARS
RESIDING AT KAMASAMUDRA VILLAGE,
MAVINAKERE POST HALEKOTE HOBLI,
HOLENARASIPURA TALUK
HASSAN DISTRICT PIN – 573211

....PETITIONER

(BY SMT PRAMILA NESARAGI, SENIOR ADVOCATE A/W
SRI : SHIVANANDA B.S., ADVOCATE)

AND

1. SRI PRAJWAL REVANNA @ PPAJWAL R
SON OF SRI H D REVANNA
AGED ABOUT 28 YEARS
RESIDING AT NO 43,
PADAVALAHIPPE VILLAGE AND POST,
KASABA HOBLI, HOLENARASIPURA TALUK
HASAN DISTRICT PIN – 573211
2. SR MANJUA
S/O LATE ANNAIAH GOWDA, AGED ABOUT 61 YEARS,
R/AT HANYALU VILLAGE,
ANANDUR POST, RAMANATHAPURA HOBLI,
ARAKALGUD TALUK, HASSAN DISTRICT-573102
3. SRI VINOD RAJ K H
S/O HANUMANTHAIAH, AGED ABOUT 29 YEARS,
R/AT NO.562/2, AMBEDKAR NAGAR, KONANURU,
ARAKALGUD VILLAGE, HASSAN DISTRICT-573102
4. SRI H M CHANDREGOWDA
S/O SRI MALLALIGOWDA, AGED ABOUT 65 YEARS,
R/AT NO.54, HONNASHATTIHALLI,
SRINIVASAPURA POST, CHANNARAYAPATNA TALUK,
HASSAN DISTRICT-573211 KARNATAKA.
5. SRI M MAHESH @ LOKESH
S/O H C MANJAPPA SHETTY,
AGED ABOUT 49 YEARS,
R/AT DOOR NO.349,
SAISADANA, HEMAVATHINAGAR,
NEAR CHANNAMBIKA THEATRE,
HOLENARASIPURA -573211
HASSAN DISTRICT.
6. SRI R SATEESHA

S/O SRI GOWDEGOWDA,
AGED ABOUT 48 YEARS,
R/AT RAMADEVAPURA,
YELAGUNDA POST, SALIGRAMA HOBLI,
HASSAN DISTRICT -573219

RESPONDENTS

(BY SRI : UDAYA HOLLA, SENIOR ADVOCATE A/W
SRI : M.KESHAVA REDDY, ADVOCATE FOR R1;

SRI : M.R.VIJAY KUMAR & SRI SUNIL M .V., ADVOCATES FOR R2;

SMT: AKKAMAHADEVI HIREMATH, ADVOCATE FOR R3;

SRI : A. MANJUNATHA & SRI : NAGESHA .K., ADVOCATES FOR R4;

R-5 SERVED-UNREPRESENTED

VIDE COURT ORDER DATED 19.8.2019 SUMMONS

TO R5 IS HELD SUFFICIENT;

SRI : MAHESH R. UPPIN, ADVOCATE FOR R6)

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951, BY SRI. G. DEVARAJEGOWDA, PETITIONER A/W HIS COUNSELS SRI. SRI.SHIVANANDA D.S., SMT.SHEELA RODRIGUES AND SMT BINDU.H (ADVOCATE FOR PETITIONER) BEFORE THE REGISTRAR (JUDICAL) ON 06.07.2019, (THE PROCEEDINGS OF REGISTRAR (JUDICAL) IS AT PAGE NO.1 OF THE PETITION), CHALLENGING THE ELECTION OF RESPONDENT NO.1, RETURNED CANDIDATE SRI.PRAJWAL REVANNA @ PRAJWAL R FORM-16 HASSAN (GENERAL) PARLIAMENTARY CONSTITUENCY HELD IN THE YEAR 2019 AND THE PETITIONER PRAYS THIS HON'BLE COURT TO :-

- a) TO DECLARE THAT THE RESULT OF THE ELCTION SO FAR IT IS CONCERNED OF RESPONDENT NO.1 HAS BEEN MATERIALLY EFFECTED BY THE IMPROPER ACCEPTANCE OF HIS NOMINATION UNDER SECTION 100(1)(b)(d)(i)(iii)(iv) OF THE REPRESENTATION OF PEOPLE ACT, 1951, CONTRARY TO SECTION 33, 33(A)(B), RULE 4(A) AND FROM 26 AS ILLEGAL AND VOID.
- b) TO DECLARE THAT ON THE DATE OF ELECTION i.e. 18.04.2019 AND ON THE DATE OF DECLARATION OF THE RESULT i.e., 23.05.2019, THE 1ST RESPONDENT HAD COMMITTED CORRUPT PRACTICE AND HE WAS NOT QUALIFIED TO BE CHOSEN TO FILL THE SEAT OF 16-HASSAN PARLIAMENTARY CONSTITUENCY UNDER SECTION 100 (1)(b)(d)(iv) OF THE REPRESENTATION OF PEOPLE ACT, 1951.
- c) TO DECLARE THAT THE VOTES RECEIVED AND COUNTED IN FAVOUR OF RESPONDENT NO.1 NUMBERING 6,76,606 VOTES AD IMPROPER RECEPTION AND TREAT THEM AS VOID, WASTED AND THROWN AWAY VOTES.
- d) TO DECLARE THAT THE RESULT OF RESPONDENT NO.1 OF 16-HASSAN PARLIAMENTARY CONSTITUENCY AS NULL AND VOID.
- e) TO DECLARE THAT THE RESULT OF THE ELECTION HAS BEEN MATERIALLY EFFECTED BY THE IMPROPER RECEPTION AND COUNTING OF 6,76,606 VOTES IN FAVOUR OF RESPONDENT NO.1 AS VOID UNDER SECTION 100(1)(A)(d)(iii)(iv).
- f) (i) TO DECLARF THAT TH RESPONDENT NO.2 HAS RECEIVED MAJORITY OF THE VALID VOTES;
(ii) THAT BUT FOR THE CORRPUT PRACTICE COMMITTED BY RESPONDENT NO.1 THE RESPONDENT NO.2 WOULD HAVE OBTAINED MAJORITY OF THE VALID VOTES;
(iii) TO DECLARE THAT 6,76,606 VOTES RECEIVED AND COUNTED IN FAVOUR OF RESPONDENT NO.1 AS THROWN AWAY; WASTED AND INVALID AND AS VOID VOTES;
(iv) FURTHER DECLARE THAT 5,35,282 VOTES RECEIVED AND COUNTED IN FAVOUR OF RESPONDENT NO.2 AS VALID VOTES; AND DECLARING AS HAVING BEFN DULY ELECTED;
(v) PASS SUCH OTHER SUITABLE ORDER OR ORDERS WHEREBY IN RESPECT OF PERSON/S WHO RESPONSIBLE FOR CORRUPT PRACTICE AT THE ELECTION AS GUILTY AS CONTEMPLATED UNDER SECTION 99(1)(a)(i)(ii);
- g) TO DECLARE THAT IN FACT THE RESPONDENT NO.2 HAS RECEIVED MAJORITY OF THE VALID VOTES AND HE HAS TO BE DECLARED AS HAVING BEEN DULY ELECTED UNDER SECTION 98(c) OF THE REPRESENTATION OF PEOPLE ACT, 1951;

- h) TO FURTHER DECLARE THAT THE VOTES OBTAINED BY RESPONDENT NO.1 IS BY CORRUPT PRACTICES AND THAT RESPONDENT NO.2 WOULD HAVE OBTAINED A MAJORITY OF THE VALID VOTES.
- i) TO DECLARE THAT THE ELECTION OF 1ST RESPONDENT AS RETURNING CANDIDATE IS AND FURTHER DECLARE THAT THE RESPONDENT NO.2 IS OUGHT TO HAVE BEEN DULY ELECTED UNDER SECTION 98 READ WITH SECTION 101 OF THE REPRESENTATION OF PEOPLE ACT, 1951;
- j) TO MAKE AN ORDER REGARDING THE CORRUPT PRACTICE COMMITTED BY PERSONS OTHER THAN RESPONDENT NO.1 IN THE ELECTION BY FOLLOWING PERSONS VIZ. SRI.H.D.REVANNA, SRI.SURAJ AND OTHERS.
- k) PASS SUCH OTHER ORDERS DEEMED NECESSARY UNDER SECTION 125(A) OF REPRESENTATION OF PEOPLE ACT, 1951 AND
- l) TO AWARD COSTS AND SUCH OTHER CONSEQUENTIAL RELIEF/RELIEFS IN THE CIRCUMSTANCES OF THE CASE.

THIS ELECTION PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

1. I.A.No.8/2019 is filed by respondent No.1 under section 86(1) of the Representation of People Act, 1951 (hereinafter referred to as “RP ACT”) seeking dismissal of the Election Petition for non-compliance of provision of section 81(3) of the RP Act and proviso to sub-section (1) of section 83 of the RP Act read with Rule 94A of the Conduct of Election Rules (hereinafter referred to as the “Rules”).

2. I.A.No.6/2019 is filed by respondent No.6 under Order 7 Rule 11 r/w. 151 of CPC seeking dismissal of the Election Petition as the same is barred by time as prescribed under section 86(1) of RP Act.

3. Respondent No.1 in his affidavit filed in support of I.A.No.8/2019 has averred that the election petition was presented on 26.06.2019 with major and substantial defects like non-payment of court-fees, defective verifying affidavit, defective verification of pleadings, unattested annexures in the copies to the respondents, unattested copies of election petition to be served on the respondents, non-attestation of the copies before Notary, improper marking of annexures and many other major defects as pointed out by the Office in the order-sheet produced at Annexure-‘R1-37’. It is stated that in view of the above defects, the election petition cannot be considered as one filed within the limitation prescribed under section 81(1) of the RP Act. All the office objections were removed only on 25.07.2019 beyond the period of limitation of 45 days and therefore, the election petition is barred by time and is liable to be dismissed *in limine*.

4. Respondent No.6 has also made similar averments in his affidavit and has sought for dismissal of the election petition.

5. Both these applications are opposed by the election petitioner contending that, that Section 83 of the Representation of Peoples Act, 1951 read with Rule 94A is not a ground available under section 86(1) of the RP Act, 1951. The Petitioner has complied substantially Section 81(3) of the Representation of Peoples Act, 1951 and Section 81(3) is also not mandatory. The Election Petition has been filed within 45 days from the date of declaration of result and it is not barred by time. The Election Petition filed by the Petitioner was not suffering from any defect of substantial nature. Whatever defects pointed out were not of substantial nature. Petitioner has complied with the defects which were trivial in nature, like stitching, binding, paginating and clerical defects and almost all the defects had been complied with and it was posted before the court on 12.07.2019. It was not filed with defective verification affidavit and petitioner’s signature is subscribed in all pages including verification.

6. I have heard Smt.Pramila Nesargi, learned Senior Counsel appearing on behalf of Sri.Shivananda D.S., learned counsel for election petitioner, Sri.Udaya Holla, learned Senior Counsel appearing on behalf of Sri.M.Keshava Reddy, learned counsel for respondent No.1 and Sri.Mahesh R.Uppin, learned counsel for respondent No.6

7. Sri.Udaya Holla, learned Senior Counsel for respondent No.1 has placed reliance on the following decisions namely,

- (i) *SATYA NARAIN vs. DHUJA RAM & Others, (1974) 4 SCC 237,*
- (ii) *GOPAL PRASAD SHASTRI vs. Mrs. ARCHANA KUMAR & Others, AIR 19844 DELHI 280,*
- (iii) *GILBERT JOHN MENDONCA vs. NARENDRA LALCHANDJI MEHTA & Others, 2018 SCC Online BOMBAY 175,*
- (iv) *LACHHMAN DAS ARORA vs. GANESHI LAL & Others, (1999) 8 SCC 532,*
- (v) *AJAY GUPTA vs. RAJU @ RAJENDRA SINGH YADAV, (2016) 14 SCC 314,*

- (vi) INDIAN OIL CORPORATION Ltd., vs. MUNICIPAL CORPORATION & Others, (1995) 4 SCC 96,
- (vii) NATIONAL INSURANCE Co. Ltd., vs. PRANAY SETHI Others, (2017) 16 SCC 680,
- (viii) SARITHA S. NAIR vs. CHIEF ELECTION COMMISSIONER OF INDIA, 2019 SCC OnLine Kerala 3713.

8. The sum and substance of argument of the learned Senior Counsel is that, in the instant case, election was declared on 23.05.2019. In view of the limitation prescribed in section 81 of the RP Act, the election petition was required to be presented by any candidate at such election or any elector within 45 days therefrom, but not earlier than the date of election of the returned candidate. The period of limitation prescribed under section 81 was to expire on 07.07.2019. Even though the election petition was filed on 06.07.2019, it was full of defects. The majority of the defects were incurable and amounted to non-compliance of the mandatory requirements provided under sections 81 and 83 of the RP Act. Filing of copies are mandatory in character. As per section 81 of the RP Act, it is essential that the petition must be accompanied by requisite number of copies. If this is not done and the period of 45 days has expired, the defect cannot be cured subsequently, because the provisions of the Act are mandatory in nature. If the copies are supplied subsequently, the same will not cure the non-compliance of section 81 of the RP Act. After the expiry of period of limitation, even the Court has no power to condone the delay and extend time to comply with the provisions of section 81(3) of the RP Act. Once the limitation sets in, it commands the Court to dismiss the election petition as held by the Hon'ble Supreme Court in 1999 (8) SCC 532 that the law of limitation has to be applied with all its vigour when the statute so prescribes. The court cannot extend period of limitation. The very object of expeditious trial would be defeated if the presentation of the election petition should be treated casually and lightly permitting all kinds of devices to delay the ultimate trial. Placing reliance on para 11 of the decision in SATYA NARAIN vs. DHUJA RAM & Others in (1974) 4 SCC 237, learned Senior Counsel emphasized that,

"11. Part VI of the Act deals with disputes regarding election. Chapter II therein provides for presentation of election petitions while Chapter III for trial of election petitions. The right to challenge an election is conferred under the Act which is made in conformity with the provisions of Article 329(b) of the Constitution. It is well settled that it is a special right conferred under a self-contained special law and the court will have to seek answer to the questions raised within the four corners of the Act and the powers of the Court are circumscribed by its provisions. It is not a common law right and an election petition cannot be equated with a plaint in a civil suit."

9. In order to point out the nature of objections raised by the office, learned Senior Counsel Sri. Udaya Holla referred to the examination report/check slip wherein the office had enumerated as many as 22 objections. Amongst these objections, learned Senior Counsel highlighted the following objections as the major and substantial defects the non-compliance of which within 45 days from the date of declaration of results would render the election petition not a valid petition in the eye of law. These defects are extracted herebelow:

9	Is any schedule or Annexure filed with the Petition? If so is it signed and verified?	No, (A) Each of the Annexures to be signed and verified by the petitioner legible under his original signature in all the copies of Election Petition and 3 office copies. (B) Each page of the Annexures to be signed by the Petitioner in main petition a/w 3 office copies+ Respondent copies.
15	Is the petition signed by the Petitioner and verified in the manner laid down in C.P.C. for verification of pleadings?	Petitioner has to verify the pleadings of the petition as per Order 6 Rule 15 of CPC for verification of pleadings
17	Is the affidavit in Form No.25 (as per Rules 94A Conduct of Elections Rules, 1961)	No, but affidavit filed a/w petition.

22. Other Objections:

- 3. Para No. XXXV at page No. 54 to be clarified. Regarding Blanks to be filled.
- 6. Annexure-AB not forthcoming.
- 11. Verification of Pleadings to be in strict compliance with the order 6 Rule 15 of CPC, 1908.
- 12. Every copy of the Election Petition 3+6 to be attested as "True copy" by the petitioner under his original signature of the petitioner (under section 81(3) of the RP Act).
- 15. Copies of Respondents and 3 office copies to be the true copy of the original Election Petition in all respect and manner.
- 16. All Copies of Respondents and 3 extra copies to be dated and signed by the advocate for Petitioner in Index, Petition and List of Documents.

18. Every Annexure to be accompanied by verification.

19. Every Annexure to be verified as contemplated under the Provision of Code of Civil Procedure, 1908.

10. Referring to the very same examination report/check slip, Learned Senior Counsel submitted that even though some of these objections were rectified on 15.07.2019, yet the objections at SI.Nos.9(A)(B), 22(12), 22(16), 22(18) and 22(19) still remained to be complied even after the expiry of time prescribed under section 81(1) of the RP Act. As a result, election petition presented before the Court was not a valid election petition in the eye of law and is therefore, liable to be dismissed in *limine*.

11. Learned counsel appearing for respondent No.6 has adopted the arguments canvassed by learned Senior Counsel appearing for respondent No.1.

12(i) Learned Senior Counsel appearing for election petitioner Smt.Pramila Nesargi countered each of these arguments, contending that the applications filed by respondent No.1 and respondent No.6 in I.A.Nos.8/2019 and 6/2019 do not refer to the election petition filed by the petitioner. Pointedly referring to the affidavits shorn by respondent Nos.1 and 6, learned Senior Counsel pointed out that in their respective affidavits, respondent Nos.1 and 6 averred that, “*the election petition was filed on 26.06.2019 which was defective in nature.*” Based on this portion of the affidavit, learned Senior Counsel has built up an argument that the objections raised in the applications refer to the election petition filed on 26.06.2019 whereas no such objections have been pointed out in the election petition filed by the petitioner on 05.07.2019. Thus she contended that the applications in I.A.No.6/2019 and I.A.No.8/2019 are not maintainable and are liable to be dismissed solely on that score.

12(ii) Secondly, learned Senior Counsel argued that the objections raised by respondent Nos.1 and G are not specific and are lacking in material particulars. Eventhough it is contended that the copy furnished to respondent Nos.1 and 6 did not contain the required attestation and signatures of the petitioner and his Advocate, yet, the copies served on respondent Nos.1 and 6 are not produced before the court and therefore, no credence could be given to the objections raised in the affidavit. Further referring to series of judgments rendered by the Hon’ble Apex Court and various High Courts, learned Senior Counsel emphasized that law is now well crystallized that an election petition cannot be dismissed in *limine* for non-attestation of annexures or for non-compliance of Order VI Rule 15(4) of CPC. These defects are curable defects and are not integral part of the election petition. Order VI Rule 15 of CPC is not a prerequisite prescribed under the RP Act and therefore, non-compliance of the said rule does not vitiate the election petition as long as the election petition discloses cause of action and triable issue for determination of the Court and the same is filed within the time prescribed under the RP Act. It is the submission of learned Senior Counsel that RP Act overrides the provisions of CPC and the High Court Rules. Respondents have not made out any grievance that on account of the defects noted by the Office, respondents are either mislead or prejudiced in their defence. The defective verification is not fatal to the maintainability of the petition. Likewise, non-attestation of the annexure is also held to be not material for the purpose of sustaining the charges made in the election petitions. Even if respondents are subjected to any prejudice on account of the defects in the presentation of the election petition, the same needs to be proved during trial and cannot be a ground to seek dismissal of the election petition at the threshold.

12.(iii) In support of her submission, learned Senior Counsel has submitted a long list of authorities viz:

1. Abdul Rauf v. Govind Ballab Pan and others, 8ELR 240
2. N.P.Changalraya Naidu v. G.N. Pattabhi Reddy, AIR 1964 A.P. 164
3. Murarka Radhey Sham Ram Kumar v. Roopsingh Rathore, AIR 1964 SC 1545
4. Ch.Subbarao v. Member of Election, AIR 1964 S.C. 1027
5. Anup Singh v. Abdul Gani, AIR 1965 SC 815
6. Sahodrbai Rai v. Ramasingh Agarwar, AIR 1968 SC 1079
7. Kamalam v. Dr.V.A. Syed Mohamad, (1978) 2 SCC 659
8. F.A. Safa and others v. Singora and others, (1991) 3 SCC 375
9. Makhu Lal v. Bachcha Patha, AIR 1992 Allahabad 358
10. T. M. Jacob v. Poulose and others, AIR 1999 SC 1359
11. H.D.Revanna v. G. Puttaswamy Gowda, AIR 1999 SC 768
12. Badruddin Qureshi v. Prem Prakash, AIR 1999 SC 2002
13. Anik Deshmukh v. Onkar N, AIR 1999 SC 732
14. T. Punzathaing v. Hangkhanlia, AIR 2001 SC 3924
15. Ram Prasad Sharma v. Manikumar Subba and others, (2003) 1 SCC 289

16. *Chandrakantha Uttam Chodankar v. Dayanand Rayu*, AIR 2005 SC 547
17. *Prasannakumar v. G.M. Siddeshwar and others*, AIR 2010 KAR 113
18. *K.K. Ramachandran Master v. Sreyamakumar and others* (2010) SCC 428
19. *Kedhar Shashikanth Deshpande v. Bhor Municipal Corp*, AIR 2011 SC 463
20. *Neena Vikram verma v. Balmukanda Singh Gautham*, AIR 2013 SC 1632
21. *G.M. Siddeshwar v. Prasannakumar*, 2013(4) SCC 776
22. *Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others*, AIR 2012 SC 2638
23. *Ashraf Kokkur v. Abdul Khaddar*, CDJ 2014 SC 715
24. *Madiraju Venkataramana Raju v. Peddireddigari Ramachandra Reddy*, 2018 (14) SCC 1
25. *A. Manju v. Prajwal R, E.P. 1/2019*
26. *Patel Ahmed Muhammad v. Balwant Singh Rajputh and other*, (2018) 18 SCC 501
27. *Abdulrasakh v. K.P. Mohamed and others*, (2018) 5 SCC 598

13. I have bestowed my careful consideration to the contentions urged by the learned Senior Counsels and have carefully scrutinized the material on record.

14. These contentions give rise to the following questions:

- (1) *Whether the defects found in the presentation of election petition and the copies thereof are of vital nature and amount to non-compliance of mandatory requirements of sections 81 and 83 of the RP Act?*
- (2) *If so, whether the election petition is liable to be dismissed in limine for non-compliance of these requirements within 45 days from the date of declaration of results?*
- (3) *Whether the High Court Rules confer jurisdiction upon this court to permit correction or removal of fundamental defects in an election petition beyond the period of limitation provided under the RP Act?*
- (4) *Whether compliance of the mandatory requirements of sections 81 and 83 of the RP Act after the expiry of period of limitation prescribed under the RP Act validates the defective election petition?*

15. Before proceeding to answer these questions, it may be relevant to note that the defects enumerated in the check slip based on which I.A.Nos.8/2019 and 6/2019 are filed by respondent Nos.1 and 6 could be broadly divided into three categories namely:

- (1) *Defects relating to verification of pleadings in terms of Order VI Rule 15 of CPC.*
- (2) *Non-attestation of annexures appended to the election petition.*
- (3) *Defects in the copies served on respondent Nos.1 and 6.*

Defects relating to verification of pleadings

16. Insofar as the verification of the pleadings is concerned, the objections raised by the office in the examination report or the check slip make it evident that the election petitioner did not verify the pleadings as per Order VI Rule 15 CPC at the time of submission of the election petition and the same were rectified subsequent to 15.07.2019. Objections in this regard at SI.No.15 reads as under:

15	Is the Petition signed by the Petitioner and verified in the manner laid down in C.P.C. for verification of pleadings?	Petitioner has to verify the pleadings of the petition as per Order 6 Rule 15 of CPC for verification of pleadings.
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17. Section 83(1)(c) of the RP Act specifically provides that, an *election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings*. Dealing with this provision, the Hon'ble Supreme Court in *G.M. SIDDESHWAR vs. PRASANNA KUMAR*, (2013) 4 SCC 776, in para 23 thereof, has held as under:

23. A reading of Section 83(1)(c) of the Act makes it clear that what is required of an election petitioner is only that the verification should be carried out in the manner prescribed in CPC. That order 6 Rule 15 requires an affidavit 'also' to be file does not mean that the verification of plaint is incomplete if an affidavit not filed. The affidavit, in this contest is a stand – alone document."

18. Thus the law on the point is clear that verification of the election petition in the manner prescribed in

Order VI Rule 15 is a *sine qua non* to maintain the election petition, though non-filing of verifying affidavit does not render the verification incomplete. Order VI Rule 15 CPC prescribes the manner in which the pleading is required to be verified. The rule reads as under:-

"15. Verification of pleadings. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleadings what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."

19(i) In the instant case, on perusal of the records, it is noticed that the petitioner has filed a verifying affidavit along with the election petition (page No.60) Which reads as under:

VERIFYING AFFIDAVIT

- (1) I, G.Devarajegowda, son of late Gundegowda, aged 42 years, residing at Kamasamudra Village, Mavinakere Post, Hakkote Hobli, Holenarasipura Taluk, Hassan District-573211, do hereby solemnly affirm and state on oath as follows :
- (2) I submit that, I am the petitioner in the above case and I am well conversant with the facts and circumstances of the case.
- (3) I submit that the Paragraph-I to XXXVI and the prayer made therein are true to the best of my knowledge, information and belief.
- (4) I submit that the Annexures-A to Z, and AA and AB are true copies of the originals.

I, the deponent above named hereby verify and declare that this is my name and signature.

Sd/-
Advocate
Bangalore,
Dt.05.07.2019.

Sd/- Deponent

This affidavit is seen to have been sworn on 05.07.2019 and was filed along with the election petition on the date of presentation of the election petition i.e., on 05.07.2019. In addition to the verifying affidavit, the election petitioner has filed another affidavit at page 64, in accordance with the proviso to section 83(1) of the RP Act. In para 3 of the said affidavit, the declarant/election petitioner has sworn thus:

"3) I have filed this affidavit under section 83(1) Proviso as I have alleged corrupt practice against respondent No. 1 in the election petition. I am filing this affidavit in support of the allegations made by me regarding corrupt practice and the particulars thereof."

19 (ii) In the subsequent paragraph No.4, the election petitioner has stated that the averments made by him in the election petition pertaining to the corrupt practices under sections 123(1), 123(2), 123(3), 123(3A), 123(6), 123(7) and 123(8) of the Representation of People Act, 1951 are true to the best of his knowledge.

19(iii) In paragraph No. 5, he has sworn to the material particulars which he has affirmed them to be true. Likewise, in the subsequent paragraphs, he has specified as to which of those allegations are true to the best of his knowledge and which are based on the information secured by him.

19(iv) This affirmation, in my view, serves the purpose of Order VI Rule 15 CPC. The verifying affidavit filed by the petitioner in terms of Order VI Rule 15 CPC and another affidavit filed in terms of the proviso section 83(1) of the Act read together, in my view, are in substantial compliance of the requirements of section 83 of the RP Act. In this regard, it may be pertinent to refer to the dictum of the Hon'ble Supreme Court in the case of *H.D.REVANNA vs. G.PUTTASWAMY GOWDA & Others AIR 1999 SC 768*, in paragraph 14 whereof it is held as under:

"Section 86 provides for dismissal of election petition in limine for non-compliance of Sections 81, 82 and 117. Section 81 relates to presentation of election petition. It is not the case of the appellant before us that

the requirements of Section 81 were not complied with though in the High court a contention was urged that a true copy of the election petition was not served on the appellant and thus the provisions of Section 81 were not complied. Sections 82 and 117 are not relevant in this case. Significantly Section 86 does not refer to Section 83 and non-compliance of section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance of Section 83 may lead to dismissal of the petition only if the matter falls within the scope of O.6, R.16 or O. 7, R.11, CPC. Defect in Verification of the election petition or the affidavit accompanying election petition has been held to be curable and not fatal.”

19 (v) No doubt in instant case the alleged defects in verification are stated to have been rectified only after the expiry of 45 days prescribed under section 83 of the RP Act, yet, these defects being curable and not of vital nature, non-compliance of these requirements within the period of limitation, in my view, do not entail dismissal of the election petition at the threshold. In that view of the matter, the first set of objections raised by respondent No.1 and respondent No.6 cannot be accepted as a ground to dismiss the election petition at the preliminary stage.

Non-attestation of annexures:

20(i) Coming to the next objection raised by the respondents regarding maintainability of the election petition for non-attestation of annexures is concerned, learned counsel for the election petitioner Smt.Pramila Nesargi has placed reliance on the decision of the Hon'ble Supreme Court in *ASHRAF KOKKUR vs. K.V.ABDUL KHADER, CDJ 2014 SC 715*. In the said decision, the questions that arose for consideration of the Hon'ble Supreme Court were, whether *a schedule or annexures to the election petition is an integral part of the election petition? and whether the Election petition is liable to be dismissed for contravention of section 81 (3) of the RP Act?*

20(ii) In answering these questions, the Hon'ble Supreme Court referred to its earlier decision in the case of *SAHODRABAI RAI vs. RAM SINGH AHARWAR, AIR 1968 SC 1079* wherein it is held that,

“A schedule or an annexure which is merely an evidence in the case and included only for the sake of adding strength to the petitioner, does not form an integral part of the election petition. It was a case where the annexures were not verified by the election petitioner as required under section 83(2) of the RP Act.”

20 (iii) This issue was specifically considered in *M. KAMALAM vs. V.A. SYED MOHAMMED, (1978) 2 SCC 659* wherein the Hon'ble Supreme Court observed that,

“It would, therefore, be seen that if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified, since it forms part of the election petition. The subject matter of sub-section (2) is thus a schedule or annexure forming part of the election petition and hence it is placed in section 83 which deals with contents of an election petition. Similarly, and for the same reasons, the affidavit referred to in the proviso to Section 83, sub-section (1) also forms part of the election petition. The election petition is in truth and reality one document consisting of two parts, one being the election petition proper and the other being the affidavit referred to in the proviso to Section 83, sub-section (1). The copy of the election petition required to be filed under the first part of sub-section (3) of Section, 81, would, therefore, on a fair reading of that provision along with Section 83, include a copy of the affidavit. That is why the appellant attached a copy of the affidavit to the copy of the election petition proper and filed the two as one single document along with the election petition.”

20(iv) The test to determine whether an annexure or schedule appended to an election petition is an integral part of the petition has been explained by his Lordship Justice Hidayatulla in Sahodrabai Rai's case, referred to supra, as under:-

“... Even if this be not the case, we are quite clear that sub-section (2) of Section 83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition but in the accompanying schedules or annexures. We can give quite a number of examples from which it would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. For example, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases, be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, that must be signed and verified, but such annexes or schedules are then treated integrated with the election petition and copies of them must be served on the respondent if the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof.”

21. This exposition makes it undoubtedly clear that if the facts constituting the grounds to set-aside the election are set out in the accompanying schedules or annexures, the same become part and parcel of the pleadings since the election petition cannot be meaningful dehors these schedules/annexures. If the petitioner chooses to narrate the details of corrupt practice by way of annexures/schedules instead of making an elaborate narration of the averments in the petition, it goes without saying that such annexures/schedules are nothing but part of the pleadings which cannot be separated from the plaint or the petition, since the signature and verification of the petitioner is necessary to render the petition valid in the eye of law, by virtue of prescription contained in section 83(2) of the Act, the petitioner is required to sign and verify the same in the same manner as the petition failing which the petition is rendered liable for dismissal at trial as prescribed in section 86 of the RP Act.

22. In the light of the above proposition of law expounded by the Hon'ble Supreme Court as discussed above, let us now proceed to discuss whether the schedules or annexures appended to the election petition in the instant case are an integral part of the election petition so as to warrant verification and signatures as provided under section 83(2) of the Act?

23. In the instant case, an incisive reading of the election petition and the averments made therein go to show that the various annexures referred to in the election petition are an integral part of the election petition which under law were required to be signed and verified by the petitioner. I have drawn this conclusion from the relevant portion of the election petition extracted herebelow namely para XIV of the petition, in page 9, wherein the averments read as under:-

“That as per Form 26, not only the information contemplated under the Act and rules, but also instructions issued by the Election Commission from time to time has to be duly filled. In the instant case, the respondent No.1 has filed his nomination along with the affidavit in Form 26. The nomination copy is herewith produced as Annexure-G and Form 26 is produced as Annexure-H. The petitioner submits that the information furnished in Form 26 was notified for the information of the public and candidates as contemplated under Section 33(A)(3) for the information of the electorate. After going through the affidavit, the candidates, respondent No.2 in particular filed his objections by himself and by the political party which has sponsored him. Copies of the same are produced as Annexures-J and J1.”

These averments go to show that one of the grounds urged in the petition for setting aside the election of respondent No.1 in the false information furnished by respondent No.1 in Form 26. The details of the said information has not been elaborated in the petition instead the copy of the nomination itself has been produced as one of the annexures to show that the information furnished therein are false and furnish a ground for setting aside the election. Likewise, the details of the objection filed by respondent No.2 are also not specified in the petition instead a reference to the said objection is made in Annexures-‘J’ and ‘J1’. In the said circumstances, without reading the annexures, it is not possible to understand the false information alleged to have been given by respondent No.1 so as to proceed against him under Section 33(A)(3) of the RP Act.

Further in some para, in page 10 of the petition, it is stated:

“When nomination of respondent No.1 was being scrutinized by Returning Officer, the respondent No.2 brought to the notice of the Returning Officer about the objections filed by him and requested him to reject the nomination, as Form 26 filed by respondent No.1 was not in accordance with law. But the Returning Officer accepted the same in spite of objections without considering the questions raised by respondent No.2. The acceptance of the nomination was in the Annexure-G itself. It was stated therein that he has passed separate order. Copy of the same is herewith produced as Annexure-K. The petitioner is aggrieved by acceptance of nomination in Annexures-G and K and being aggrieved not rejecting the nomination of respondent No.1 has filed this petition, challenging the validity of the acceptance of nomination. The affidavit in Form 26 already produced vide annexure-H suffers from non-disclosure of material information, regarding the assets and liabilities, bank balance, which is of a substantial nature.”

Further, in page 11 of the petition, it is pleaded asunder:

“... The petitioner submits at this juncture itself that respondent No.2 has not only filed his rejection to the nomination of respondent No.1, but had also brought to the notice of the Returning Officer about the investments made by respondent No. 1 in two LLP firms viz. M/s Adikaraha Ventures LLP and M/s Drone Workforce LLP. Copies of Investments particulars are produced as Annexures-L and L1 respectively.”

Likewise, in page 13, sub-clause (d), it is stated thus:-

(d) In Part-B, Column No.11. of the affidavit- Form 26 (vide Annexure-H) respondent No.1 has declared that a sum of Rs.4,89,15,029/- has been paid through DD and RTGS towards the purchase of agricultural properties. In fact in the declaration made by respondent No.1's father viz. H.D. Revanna before Lokayukta, which is compulsory for every sitting M.L.A., has declared stating that he has paid Rs.47,36,000/- to respondent No.1. The said declaration is dated 30.07.2018. Copy of the declaration is produced as Annexure-M. The difference is about Rs.79,00,000/- and hence it is a false declaration.

24. The above averments make it clear that various annexures and schedules referred in the petition were part and parcel of the election petition. These are not mere documents produced as evidence, rather they were sought to be produced as the very grounds on which the election of respondent No.1 has been challenged. If these annexures are eschewed from records for want of authentication, the petition becomes bereft of necessary particulars, resultantly the petition becomes incomplete and the very substratum or the basis of the petition will collapse. Undeniably, none of these annexures were signed or verified by the petitioner at the time of presentation of the petition as noted in the check slip. As a result, these annexures cannot be treated as part and parcel of the petition. If these annexures cannot be read as integral part of the petition, there is no basis to sustain the corrupt practices alleged against respondent No.1, as such the petition itself has to be dismissed for not disclosing a cause of action under Order VII Rule 11(a) of CPC. Besides, without these annexures, no triable issue could be framed or decided by this Court. Therefore, in the absence of these annexures, the petition itself has to be treated as not a valid petition in the eye of law.

25. Of course, as held in the decisions referred above, non-compliance of requirement under section 83 of the RP Act by itself does not lead to dismissal of the petition as section 86 of the RP Act does not refer to section 83 of the RP Act. Nonetheless this defect cannot be cured by permitting the petitioner to subscribe his signature and verification of these annexures after expiry of limitation prescribed under section 81 of the RP Act. The Hon'ble Supreme Court in *SATYA NARAIAN'S* case, referred to supra, in para 14, has held as under:-

“ x x x

14. We may only add here that, in the absence of any provision under the Act or the rules made thereunder, the High Court Rules cannot confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defects in an election petition presented in the high court beyond the period of limitation provided for under the Act. It may be noted that Section 169 of the Act provides that the Central Government is the authority to make rules after consulting the Election Commission and in sub-section (3) thereof the rules have to be laid before each House of Parliament in the manner provided therein.”

In view of this legal position, attestation made by the petitioner by subscribing his signatures to these annexures after expiry of limitation, though with the permission of the Registry or the Court, has to be held as without authority of law. Consequently, it has to be held that for want of signature and verification of these annexures, the election petition, as presented to the Court, is liable to be dismissed.

Defects in the copies served on respondent Nos.1 and 6

26. The objections at SI.Nos.12, 15 and 16 indicate that,

12. *Every copy of the Election Petition 3+6 to be attested as “True copy” by the petitioner under his original signature of the petitioner (under section 81(3) of RP Act).*
15. *Copies of Respondents and 3 office copies to be the true copy of the original Election Petition in all respect and manner.*
16. *Ali Copies of Respondents and 3 extra copies to be dated and signed by the Advocate for Petitioner in Index, Petition and List of Documents.*

These objections indicate that the copies produced along with the election petition were not attested as “True Copies” and they did not contain the original signature of the petitioner as required under section 81(3) of the RP Act. This is in stark violation of section 81(3) of the RP Act which prescribes that,

“81. Presentation of petitions.-

XXX

Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

27. In *SHARIF-UD-DIN vs. ABDUL GANI LONE* in (1980) 1 SCC 403, the Hon'ble Supreme Court has observed thus

“The object of requiring the copy of an election petition to be attested by the petitioner under his own signature to be a true copy of the petition is that the petitioner should take full responsibility for its contents and that the respondent or respondents should have in their possession a copy of the petition duly attested under the signature of the petitioner to be the true copy of the petition at the earliest possible opportunity to prevent any un-authorized alteration or tampering of the contents of the original petition

after it is filed into court. Sometimes records in the court have been tampered with notwithstanding the care and caution taken by courts. It is probably to obviate any scope for such an allegation being made or to protect the interest of the respondent, the legislature thought of enacting sub-section (3) of Section 89 of the Act so that the respondent may rely on the copy served on him when he finds that the original document in the court contains allegations different from those in the copy in his custody. A respondent would not have the same degree of assurance if a copy served on him is one attested by any person other than the petitioner himself. The attestation by the advocate for the petitioner cannot be treated as the equivalent of attestation by the petitioner under his own signature. If the requirement of the second part of Section 89(3) that copy of the petition should contain the signature of the petitioner himself is not one of substance, there was no need to enact it as the first part of sub-section (3) of Section 89 of the Act would have been sufficient for it provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition therein can only mean "true copies". The importance of the provisions contained in Section 94 of the Act which makes it obligatory on the part of the High Court to dismiss a petition when it is established that Section 89 of the Act had not been complied with also cannot be overlooked in this context.

20. We are, therefore, of the view that the requirement that every copy of the election petition which is intended for service on the respondent should be attested by the petitioner under his own signature is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition as provided in section 94 of the Act. The High Court was, therefore, right in dismissing the petition on the above ground".

28. In *RAJENDRA SINGH vs. Smt. USHA RANI & Others*, AIR 1984 SC 956, the Hon'ble Supreme Court has reiterated that, if true and correct copy is not furnished to the respondent, the election petition itself is liable to be dismissed in limine. In the said decision, the Hon'ble Supreme Court has even gone to the extent of stating that, it is not the duty of the respondent to wade through the entire record to find out that whether the copy furnished now is the correct copy or not. In the instant case, the copies required to be served on the respondents were not in accordance with section 81 of the RP Act

29. In the case of *MITHILESH KUMAR PANDEY vs. BAIDYANATH YADAV*, AIR 1984 SC 305, there were number of mistakes in the copy of the petition supplied to the respondent. After referring to various decisions rendered on this point the Hon'ble Supreme Court observed that, If the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, the election Petitioner cannot take shelter under the theory of substantial compliance of mandatory requirements.

30. The position is now well settled that section 81(3) of the RP Act is mandatory and failure to comply with the same would result in dismissal of the petition even at the preliminary stage. This view gets fortified in the decision of the Hon'ble Supreme Court in *SATYA NARAIN*'s case, referred to supra, wherein the issue that fell for consideration of the Hon'ble Supreme Court was that the required number of copies had not been filed along with the election petition as required under Section 81 (3) of the RP Act and hence, the petition was not maintainable. Hon'ble Supreme Court upheld this objection and held that the petitioner is bound to furnish required number of copies along with the election petition and he cannot be permitted to furnish the copies after the period of limitation. In the light of this proposition of law, argument of the learned Senior Counsel that requisite number of copies were produced before the Court within the time granted by the Court and the same have been duly served on the respondents cannot be a reason to hold that the election petitioner has complied with the statutory requirements prescribed under section 81(3) of the RP Act.

31. The decision relied on by the learned Senior Counsel for the petitioner deal with a situation where copies were defective for one or other reasons and in that context it was held therein that such defects are curable. But in the instant case, there is total non-compliance of section 81(3) of the RP Act. Statutory mandate contained in the section was not complied by the petitioner at the time of presentation of the election petition or within the period of limitation provided under section 81 of the RP Act. Therefore, the argument of the learned Senior Counsel for the petitioner that defects falling under section 81(3) of the RP Act have been complied with the permission of the Registry or the Court cannot salvage the situation. As already pointed out, section 81(3) of the RP Act has been held to be mandatory and failure to comply with the same, the election petition is liable to be dismissed as provided under section 86(1) of the RP Act. As a result, the applications filed by the respondent Nos.1 and 6 deserve to be allowed.

Accordingly, I.A. No.8/2019 filed by respondent No.1 under section 86(1) of the Representation of People Act, 1951 is allowed. I.A.No.6/2019 filed by respondent No.6 under Order VII Rule 11 r/w. section 151 of CPC is allowed.

consequently, Election petition No.2/2019 is held not maintainable for non-compliance of statutory requirements under Section 81(3) of the Representation of People Act, 1951. For the reasons explained above, it is held that the election petition presented to the Court is not a valid petition in the eye of law and the same is therefore, liable to be dismissed and is accordingly dismissed.

In view of the dismissal of the election petition, all pending I.As. stand dismissed.

Sd/-
Judge

[No. 82/KT-HP/2/2019]

By Order,
B. C. PATRA, Secy.